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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/752,406
Filing Date: January 06, 2004
Appellant(s): LUTFALLAH, ANTHONY G.

Paul Nykaza
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 9, 2007 appealing from the Office action mailed July 6, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

- Claims 24,30-33,35 and 36 rejected in view of Bratcher (US 5,806,900) in view of Kojima (US 6,575,681).

- Claim 36 rejected in view of Bratcher (US 5,806,900) in view of Weiland (US 6,250,694), since claim 36 claims the same limitations originally presented in claim 24 on December 7, 2004 (preliminary amendment) and previously rejected in the Office Action filed on March 23, 2005.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,806,900	BRATCHER	9-1998
6,575,681	KOJIMA	6-2003
6,250,694	WEILAND	6-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 24,30-33,35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,806,900 to Bratcher et al (Bratcher) in view of US Pat No 6,575,681 to Kojima et al (Kojima).

Bratcher discloses a window stop (10, see Figures 1-9) that comprises a housing (12) defining a cavity and having a mount structure capable of being mounted to a wall having a thickness between a minimum and a maximum thickness; a bolt (14) mounted inside the housing; biasing means (16 and 18); a cover (32) defining a lip; and a resilient tab or extension member (34). The bolt is moveable between an extended and a retracted position (Figures 7 and 8).

Bratcher fails to disclose that the engagement surface is inclined with respect to the lip and that comprise at least one ridge or protrusion making the surface as a variable surface and where at least one ridge or protrusion is inclined away from the lip. Bratcher illustrates that the engagement surface is parallel with respect to the lip.

Kojima teaches that it is well known in the art to provide a device that is going to be mounted into a frame with a resilient tab (40) having an inclined, planar and smooth engagement surface with respect to a lip (21) of a cover (20) that comprise at least one ridge or protrusion (41a-c) making the surface as a variable surface and where at least one ridge or protrusion (41c) that is inclined away from the lip so as to make the device capable of being mounted to different thickness of the frame (Figures 7a-7c).

Kojima further illustrates that the engagement surface is spaced from an end wall (31) and that a distal end of the tab is spaced from the end wall when the tab is in an unflexed position (Figure 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the resilient tab described by Bratcher with an inclined engagement surface, as taught by Kojima, in order to secure the latch into the notch or opening on a wall or at a frame having any thickness.

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,806,900 to Bratcher et al (Bratcher) in view of US Pat No 6,250,694 to Weiland.

Bratcher discloses a window stop (10, see Figures 1-9) that comprises a housing (12) defining a cavity and having a mount structure capable of being mounted to a

wall having a thickness between a minimum and a maximum thickness; a bolt (14) mounted inside the housing; biasing means (16 and 18); a cover (32) defining a lip; and a resilient tab or extension member (34). The bolt is moveable between an extended and a retracted position (Figures 7 and 8).

Bratcher fails to disclose that the engagement surface is inclined with respect to the lip and that comprise at least one ridge or protrusion making the surface as a variable surface. Bratcher illustrates that the engagement surface is parallel with respect to the lip.

Weiland teaches that it is well known in the art to have a housing, that is adapted to be placed within a notch or opening of a frame or wall, that includes a resilient tab (44) that includes an engagement surface (46) that is inclined and that includes a plurality of ridges or protrusions.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a resilient tab with an engagement surface that is inclined and that includes at least one ridge or protrusion, as taught by Weiland, into a device as described by Bratcher, in order to secure the latch into the notch or opening on a wall or at a frame.

(10) Response to Argument

The applicant argues that the examiner fails to establish a prima facie case of obviousness (Page 10 Argument A1 Line 1).

The applicant is reminded that a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill without any specific hint or suggestion in a particular reference.

The applicant argues that the examiner has not establish a prima facie case of obviousness with respect to claims 23,30-33,35 and 36 on the basis that Kojima is non-analogous art, and thus, Bratcher and Kojima are not properly combinable to form an obviousness rejection (Page 10, Argument A2a Line 1).

The invention is concentrated of how a device can be adapted to be attached into different cavities of a plurality of frame members that present different thicknesses. Kojima's invention is related to a device (clip) that is adapted to be attached into different cavities of a plurality of frame members that present different thicknesses. As seen in figures 7a-7c, the device described by Kojima can be attached to a diversity of cavities of different frame thickness. Therefore, the examiner has proved that Kojima can be considered as an analogous art and that is properly combinable with the device described by Bratcher.

The applicant also argues that for obviousness purposes, prior art references are to be viewed as a whole, and examiners should not pick and choose from the disclosures of the prior art (Page 11 Argument A2a Line 21).

The applicant is reminded that the test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. At the instant, Bratcher discloses that the window stop structure is well known in the art. The improvement is how this window stop can be attached to

different frame thicknesses. Bratcher, as modified by Kojima, clearly teach that a device can be attached to different frame thicknesses.

The applicant also argues that the examiner has not established a prima facie case of obviousness with respect to claims 24, 30-33, and 35 on the basis that Bratcher and Kojima are not properly combinable to form an obviousness rejection because there is no motivation to combine the teachings of the cited references (Page 12 Argument 2b Line 1).

As establish before, the window stop structure is well known in the art (see Bratcher). The invention is directed to how this device can be attached to different frame thicknesses. Kojima teaches that it is well known in the art to provide a resilient tab that has an engagement surface that is capable of attach the device into different frame thicknesses. An ordinary skill in the art would properly combine this teaching into a well known window stop in order to provide an adjustable window stop that can be used in any frame thickness, thereby providing an user of an universal device adapted to be used in different window frames.

The applicant also argues that the examiner has engaged in improper hindsight reconstruction (Page 12 Argument 2bi Line 1).

In response, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

The applicant also argues that the features of the resin clip of Kojima would require significant modification to be incorporated into a window stop because, first, the resin clip of Kojima is configured for insertion into a circular opening, not an elongated opening, into which a window stop is typically inserted; and that the flange of Kojima is inclined downward, in contrast to the lip of a window stop, which is typically parallel to the surface on which it rests (Page 14 Argument 2bii Line 1).

The applicant is reminded that the rejection is in view of Bratcher, as modified by Kojima. Bratcher already discloses that the opening at the frame is rectangular and that the flange is parallel to the surface on which it rests. Kojima is only used to demonstrate that it is well known in the art to provide an engagement surface that can be used in different frame thicknesses.

The applicant also argues that Kojima fails to disclose that the engagement surface is inclined with respect to the lip (Page 14 Argument 2bii Line 13).

As clearly see in Figure 2, Kojima clearly illustrates that the engagement surface (41) is inclined with respect to the lip (20). Further, as seen in attachment #1, Kojima clearly illustrates the plurality of ridges at an angle or inclination with respect to the flange.

The applicant also argues that Kojima fails to disclose a tab having a planar engagement surface distal from the base portion, the planar engagement surface being spaced from the lip and inclined with respect to the lip, the planar engagement surface extending from an inner edge of the tab proximal to the housing to an outer edge of the tab distal from the housing (Page 15 Argument 3a Line 1).

As seen in attachment #2, Kojima clearly teach a tab that has at least one planar engagement surface extending from an inner edge of the tab, proximal to the housing, to an outer edge distal from the housing.

As to arguments in sections 3b (page 16) and 3c (Page 17), see response above with respect to Argument A2a Line 1 and A2b above.

Finally, although the applicant fails to provide an argument with respect to the rejection of claim 36 in view of Bratcher, as modified by Weiland, for the record, Weiland discloses a similar device as the one described by Kojima, a device that is capable of being attached into different cavities of a plurality of frame members that present different thicknesses. Weiland teaches an engagement surface that comprises a plurality of ridges that makes the device capable of being attached into different cavities with different thicknesses.

Therefore, the examiner has also proved that Weiland can be considered as an analogous art and that is properly combinable with the device described by Bratcher.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

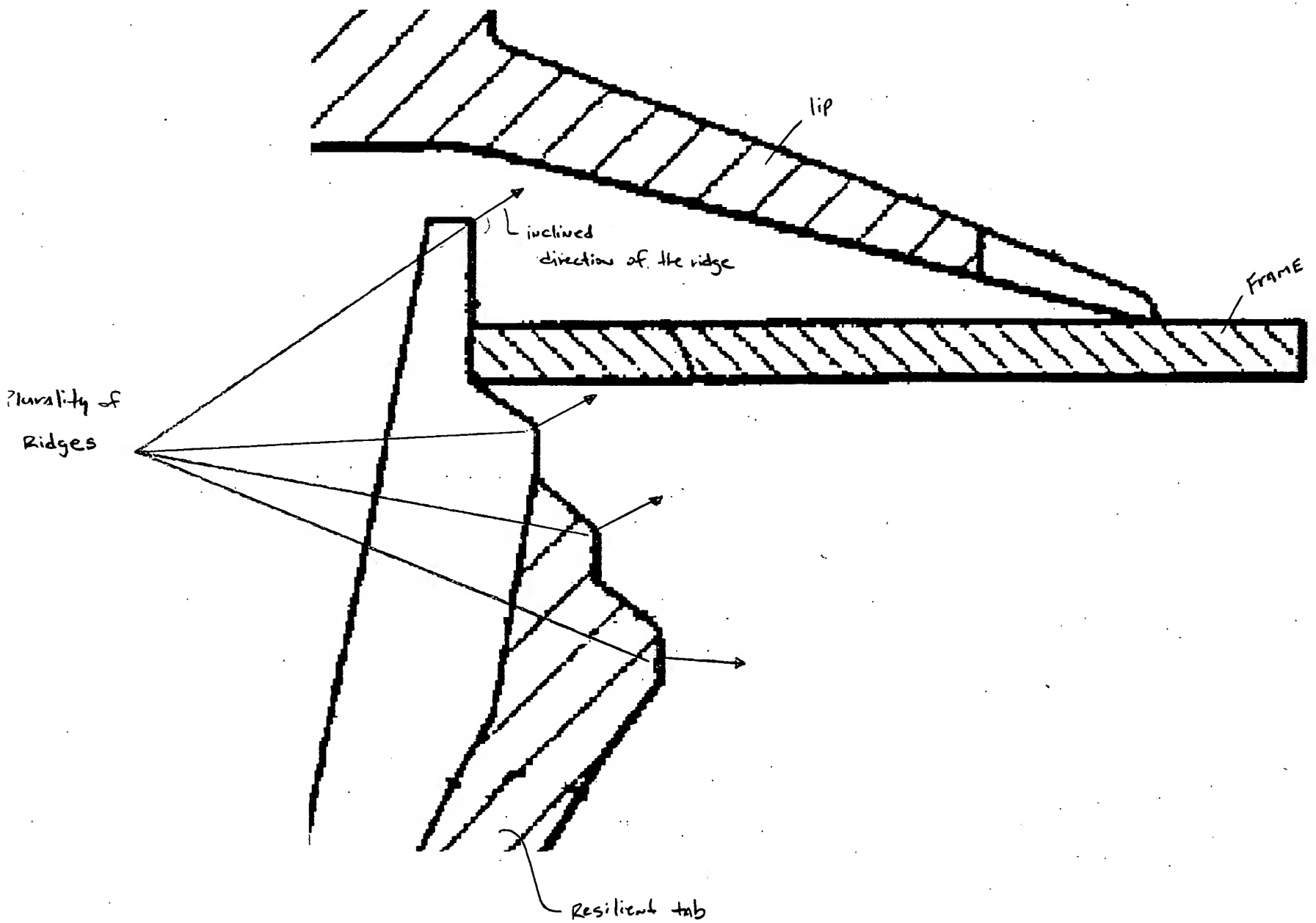
Respectfully submitted,

C.L.

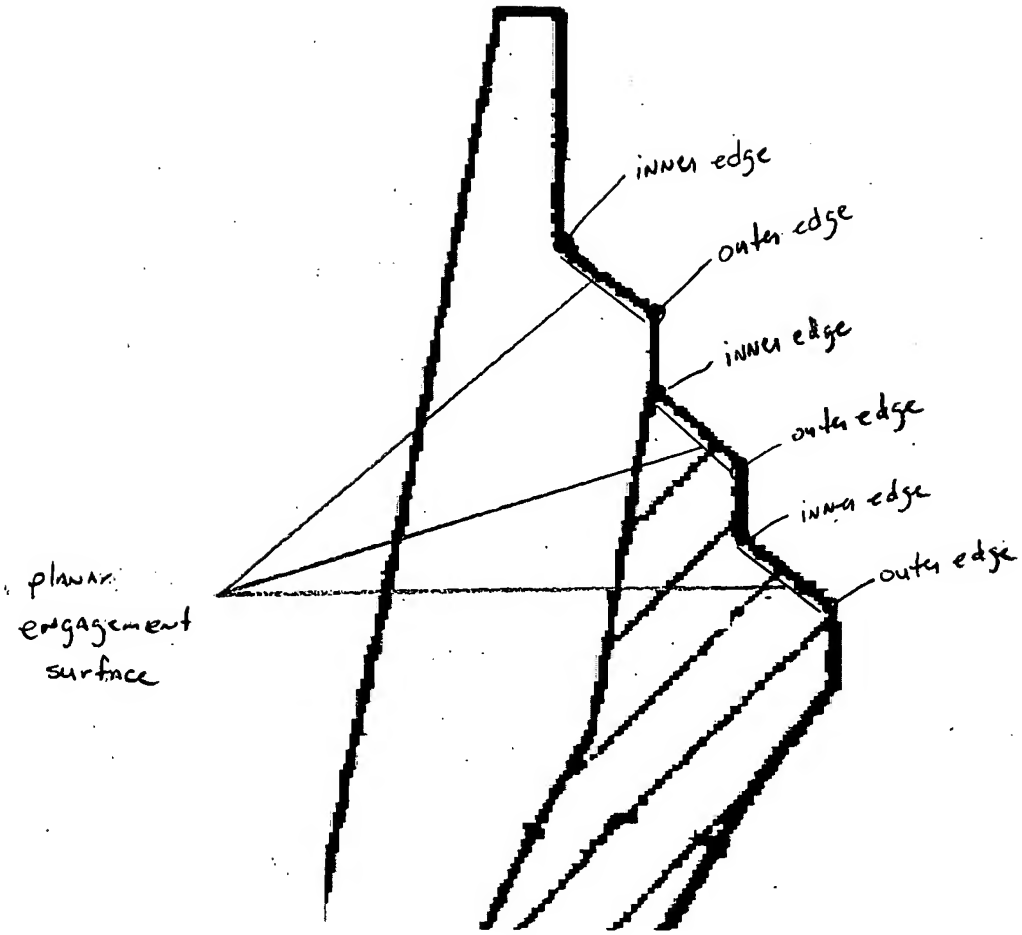
Carlos Lugo
Patent Examiner
AU 3676

Conferees:

Brian Glessner BG.
Meredith Petravick MP



Attachment #1



Attachment # 2